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In reply, please refer to:
File:

Senate Committee on Human Services and Public Housing

H.B. 2596 HD2, Relating to Children

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

March 13, 2008, 1:15 p.m.

1 **Department's Position:** The Department of Health has concerns regarding HB2596 HD2 which
2 requires a parent or legal custodian to "successfully participate in a drug treatment program for a
3 minimum of one year" in order to regain custody of a child. We defer to the Department of Human
4 Services on procedural concerns relating to the foster care system.

5 **Fiscal Implications:** No funds are appropriated for drug testing and substance abuse treatment for
6 parents and legal custodians required to successfully complete a minimum of one year in a drug
7 treatment program.

8 **Purpose and Justification:** Among the various purposes of this measure, the Department of Health is
9 particularly concerned about requiring a parent or legal custodian to successfully participate in a drug
10 treatment program for a minimum of one year before full custody can be granted. Such restrictions
11 penalize those who are actively engaged in treatment and may deter a client's progress toward recovery
12 and the goal of family reunification.

13 Substance abuse treatment focuses on developing attitudes, motivation, knowledge and skills to
14 bring about harm reduction, abstinence and change in self and lifestyle, including physical,

1 psychological, social, familial and spiritual aspects. Services must address relapse issues and help the
2 substance dependent person develop coping skills to prevent or interrupt the dependence and relapse
3 process. Progress in treatment varies for each individual, depending on the severity of addiction,
4 motivation for change, and other variables.

5 We strongly support efforts to ensure the health and safety of our children, however, we are also
6 cognizant that “solutions” may also bear unintended consequences. Policies to be adopted therefore
7 need to take into consideration that:

- 8 ▪ Drug dependency (addiction) is a chronic relapsing disease, which requires time for
9 recovery and cannot be resolved in the same manner for all individuals;
- 10 ▪ Comprehensive treatment programs that do not separate mothers from their children are
11 cost effective in comparison to the financial and social costs of separating mother and
12 child;
- 13 ▪ Removing a child from his or her family may cause serious psychological damage –
14 damage more serious than the harm intervention is supposed to prevent; and
- 15 ▪ Drug tests are not necessarily indicative of an individual’s parenting ability, as a drug test
16 does not ascertain the degree of drug use or the amount and frequency of drugs
17 consumed.

18 The DOH and Department of Human Services (DHS) are working on implementing the Access
19 to Recovery (ATR) Grant, which was awarded by the federal Substance Abuse and Mental Health
20 Services Administration to address the needs of substance abusing parents and guardians within the
21 child welfare system. The grant will provide recovery support services to individuals within the
22 DHS-Child Welfare System (formal and voluntary cases), who are currently in treatment or recovery
23 and in need of additional support services. The ATR grant will also specifically address
24 those individuals within the DHS system who are deemed substance abuse (methamphetamine) related.

1 Under the program, recovery support services may include employment readiness and job placement
2 programs, supportive transitional drug-free housing, parenting and child education, life-skill building
3 classes, child care, transportation, as well as support and spiritual counseling.

4 Thank you for the opportunity to testify on this measure.

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The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth State Legislature, 2008 Session

Senate Committee on Human Services and Public Housing

The Honorable Suzanne Chun Oakland, Chair

The Honorable Les Ihara, Jr., Vice Chair

Thursday, March 13, 2008, 1:15 p.m.

State Capitol, Conference Room 016

by

Judge Karen M. Radius
Family Court, First Circuit

Bill No. and Title: House Bill No. 2596, H.D. 2, Relating to Children.

Purpose: To amend HRS Chapter 587, the Child Protective Act, to add new provisions to protect children who may be in a household where drugs are used.

Judiciary's Position:

The Judiciary takes no position on House Bill No. 2596, H.D. 2, but offers the following comments.

The community's desire to respond to a horrific, tragic event is understandable, particularly when the victim is a defenseless child. However, our laws, including laws meant to protect children, will never be able to prevent all harm. This inevitability does not mean that we should stop trying to improve our laws and our systems of care and protection. We should never stop trying.

However, changes should not lead to even greater risk of harm (even though, of course, this would be unintended) and must result in a difference that truly matters. The Judiciary is concerned that the changes dictated by this bill may in fact create a risk of greater unintended (and unforeseen) harm. Just as importantly, the harm that it tries to address can already be addressed by the present statute. It is no dishonor when statutes are unable to cover all misfortune.

If the Legislature wishes to pass this measure, we respectfully suggest the following:



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(1) Delete the language in subsection (2) on page 2 [“(2) File for a temporary restraining order on behalf of the child against the individual who tested positive for illegal drug use.”]. HRS Chapter 587 already has sufficient avenues for immediate protection of a child subject to imminent harm. The apparent inclusion of HRS Chapter 586 (domestic abuse restraining orders) may cause confusion, which in turn may result in delay in protecting a child.

(2) On page 2 (proposed amendment to HRS Chapter 587), the requirement of substance abuse treatment is not necessary because such orders are almost routinely included in service plans for substance abusing (including alcohol) parents. The additional restrictions concerning returning children to the family home will render the system less responsive to the needs of the children we are seeking to protect. The restrictions concerning the “cohabitant or caregiver” say both too much and too little. In any given case, based on specific facts of each case, such a person should perhaps be banned from the home *or* his/her continued presence may “simply” lead to permanent removal of the child *or* a non-resident caregiver may be prohibited from any contact with the child and the family *or* any number of various other possibilities.

(3) The proposed definitions of “caregiver” and “safe home” will not necessarily provide greater protection to our children and may, in unintended and unforeseen ways, cause confusion (page 3, Part II, Section 3, lines 9-22). For example, there is already included in HRS Chapter 587 a definition for “safe family home guidelines” which does relate to court orders.

(4) Part II of House Draft 2 includes language from House Bill No. 3136. All of that language also will not necessarily provide greater protection to our children and may, in unintended and unforeseen ways, cause confusion.

Thank you for the opportunity to comment on this measure.

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COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING

Sen. Suzanne Chun Oakland, Chair

Sen. Les Ihara, Jr., Vice Chair

Thursday, March 13, 2008

1:15 PM

Room 016

OPPOSITION TO HB 2596 HD2 - RELATING TO CHILDREN

Aloha Chair Chun Oakland, Vice Chair Ihara and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on prison reform and criminal justice issues in Hawai`i for a decade. I respectfully offer our testimony always being mindful that Hawai`i has more than 6,000 people behind bars with more than 2,000 individuals serving their sentences abroad, thousands of miles away from their homes and their loved ones.

HB 2596 HD2 requires the Department of Human Services (DHS) to investigate reports of drug use in the home of a child within 24 hours. Requires a parent, legal custodian, cohabitant, or caregiver to participate in substance abuse treatment for at least one year before being awarded full custody of a child or being allowed to solely supervise the child. Establishes a system for DHS to allow children to continue to reside in pre-existing caregivers' safe homes rather than enter into foster care, subject to certain conditions. Effective 1/1/2112.

Community Alliance on Prisons opposes this measure because it assigns the Department of Human Services an impossible task and then doesn't provide any funding.

Although we are glad that the provision restricting visitation was removed, largely due to the compelling testimony of foster youth who spoke of how traumatic that was for the children, this bill is still problematic. If DHS were mandated to do these investigations, what other programs would suffer?

What will be the impact on the already over-burdened Family Court calendar?

This bill needs more thought and deliberation. It would be a shame to pass a bill that actually caused more harm than the harm it is trying to ameliorate?

Community Alliance on Prisons urges the committee to please HOLD this measure.

Mahalo for this opportunity to testify.